

REMARKS

Claims 1-26, 31-41, and 43-49 were pending in the application. Claims 1-26, 31-34 and 43-49 have been withdrawn. Claims 50-52 have been added. Accordingly, claims 35-41 and 50-52 will be pending upon entry of the present amendment. No new matter has been added.

Support for new claim 50 can be found, at least, for example, at page 52, lines 16-18 of the specification as filed. Support for new claim 51 can be found, at least, for example, in claim 41 as originally filed. Support for new claim 52 can be found at least, for example, at page 19, line 4 to page 30, line 14 of the specification, as originally filed, and claim 41 as originally filed.

Rejection of Claims 35-41 under 35 U.S.C. § 112, second paragraph

Claims 35-41 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office Action states that “the metes and bounds of a benzodiazepine derivative could not be ascertained.” Applicant respectfully disagrees with the rejection. However, solely for the sake of expedited prosecution, Applicant has amended claims 35-40 to replace the phrase “benzodiazepine derivative” with “compound.”

The Office Action also rejects claims 35-41, stating that the terms “heteroaryl,” “heterocyclyl,” and “carbocyclyl” are indefinite. Applicant respectfully disagrees with this position. Applicant submits that the terms “heteroaryl,” “heterocyclyl,” and “carbocyclyl” are well-known chemical terms of art, and that one skilled in the art would readily understand the meaning of these terms. Furthermore, the term “heteroaryl” is defined, at least, at page 7, lines 16-29 of the specification as originally filed; the term “heterocyclyl” is defined, at least, at page 5, line 25 to page 6, line 2 of the specification as originally filed; and the term “carbocyclyl” is defined, at least, at page 4, line 28 to page 5, line 2 of the specification as originally filed. As such, it is Applicant’s position that these terms are not indefinite, and their use comply with 35 USC § 112, second paragraph.

The Office Action also rejects claims 35-41, stating that “the claims are presented in contradictory terms.” Specifically, the Office Action states that the definitions of certain variables of the claims do not support the functional groups that are excluded from those variables. Applicant respectfully disagrees. As described above, the variables of formulae Ib, Ic and Id are defined using art-recognized terms, and these terms are also defined in the instant

specification as filed. As such, the skilled artisan would not only understand the functional groups that are claimed in the instant application, but also the functional groups that are not claimed in view of the claim provisos.

For example, the Office Action states that “R^{5/} is defined as heteroaryl...later in the claim, R^{5/} is excluded from being 6-chloro-pyrazinyl....This is not possible because R^{5/} is not permitted to have a halo substituent.” It is Applicant’s position that the term “heteroaryl,” as defined in the specification as filed, includes substitution by a halogen: see, *e.g.*, page 7, line 16, continuing to page 8, line 25, especially page 7, line 32, which states, “[s]uitable substituents on a heteroaryl group include halogen.” As such, the excluded functional groups are not contradictory to the definitions of the variables of the claim.

According to the Office Action, there are “too many compounds excluded from the generic claims to run an efficient search.” Applicant respectfully disagrees. The claims of the instant application claim genus compounds that are adequately supported by a number of species (see, *e.g.*, page 19, line 4 to page 30, line 14 of the specification as filed). The provisos listed in these claims merely serve the purpose of excluding a limited number of species from those genus structures. Because these claims distinctly and particularly point out the instant invention, they comply with the requirements of 35 USC § 112, second paragraph, and therefore should not present a search burden for the Examiner.

The Office Action further states that claim 41 has an “unreasonable” number of independent species. Applicant respectfully disagrees. However, solely for the sake of expedited prosecution, Applicant has amended claim 41 to depend from claim 35, as well as added new claim 50, which claims a reasonable number of species in accordance with 37 CFR § 1.141(a).

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 35-41 under 35 U.S.C. § 112, second paragraph.

Rejection of Claims 35-40 under 35 U.S.C. § 102(b)

Claims 35-38 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bell *et al.* (US 3,344,136). Applicant respectfully traverses, and notes that claims 35-38, as amended, are not anticipated by the acyl-substituted compound described by Bell *et al.* As such, the reference by Bell *et al.* does not anticipate claims 35-38 of the instant application.

Claims 35 and 39 are rejected under 35 U.S.C. § 102(b) as being anticipated by Freidinger *et al.* (EP 167919). Applicant respectfully disagrees. Freidinger *et al.* describe heterocyclic compounds substituted by 2-chlorophenyl and 3,4-dichlorophenyl. Claims 35 and 39, as filed, do not cover these functional groups: “when R^{6/} is aryl it is not...mono-halophenyl...3,4-dichlorophenyl,” (claim 35), and “R^{6*} is an aryl group which is unsubstituted or substituted by 1, 2 or 3 substituents selected from fluorine, bromine, iodine” (claim 39). As such, the reference by Freidinger *et al.* does not anticipate claims 35 and 39 of the instant application.

Claim 40 is rejected under 35 U.S.C. § 102(b) as being anticipated by Evans *et al.* (EP 284256). According to the Office Action, claim 40 “reads on the compound 745 in page 109” of the reference by Evans *et al.* Applicant respectfully disagrees, and points out that the compound illustrated in the Office Action is not compound 745 from Evans *et al.* Furthermore, the actual compound 745 from Evans *et al.*, an amide-substituted heterocycle, is not covered by the genus of claim 40. Accordingly, claim 40 is not anticipated by the reference Evans *et al.*

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 35-40 under 35 U.S.C. § 102(b).

Finally, the Office Action appears to state that the claims of the instant application are rendered obvious in view of the claim provisos (see page 5, paragraph 2). Applicant notes that, under 35 USC § 103, obviousness rejections should be based on prior art, not Applicant’s own invention. Accordingly, it is Applicant’s position that the claims of the instant application are not obvious under 35 USC § 103.

CONCLUSION

In view of the foregoing, entry of the amendments and remarks herein, reconsideration and withdrawal of all rejections, and allowance of the instant application with all pending claims are respectfully solicited. If a telephone conversation with Applicant's agent would help expedite the prosecution of the above-identified application, the Examiner is urged to call Applicant's attorney at (617) 227-7400.

The appropriate fee as set forth in 37 CFR 1.17(a) is being filed herewith. If any additional fees are due, the Director is hereby authorized to charge our Deposit Account No. 12-0080, under Order No. NV2-023US, from which the undersigned is authorized to draw.

Dated: January 7, 2008

Respectfully submitted,

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